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Description of document: Alcohol and Tobacco Tax and Trade Bureau TTB Standard Operating Procedure for handling American Viticulture Areas (AVAs) Applications, 2017

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Alcohol and Tobacco Tax and Trade Bureau
TTB FOIA Requester Service Center
1310 G Street, NW
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Washington, DC 20005
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DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
WASHINGTON, D.C. 20005

October 23, 2020

Refer to: **2020-10-014**
4040000


SENT VIA EMAIL


This letter is in response to your Freedom of Information Act (FOIA) request to the Alcohol and Tobacco Tax and Trade Bureau (TTB) dated September 27, 2020. You are requesting a copy of the TTB Standard Operating Procedure (SOP) for handling American Viticultural Areas (AVAs) applications.

We conducted a search of files within TTB for records responsive to your request and identified 13 pages which are being released in their entirety.

Please note we are charging no fee for processing your request. If you have any questions regarding this letter, feel free to contact Quinton Mason, TTB Disclosure Officer, by telephone at (202) 882-9904 or by e-mail at TTBFOIA@ttb.gov, and reference FOIA number **2020-10-014**.

Sincerely,


Amy R. Greenberg
Director, Regulations and Rulings Division


Digitally signed by Amy R.
Greenberg
Date: 2020.10.23 11:59:42 -04'00'

Enclosure(s): As stated



DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

SOP

RRD S 7640.16

**Subject: Evaluating and Responding to
American Viticultural Area Petitions**

**Date: 9/28/2017
Sunset Review: 9/28/2022**

To: All Regulations and Rulings Division Employees

1. Purpose.

The purpose of this Standard Operating Procedure (SOP) is to provide guidance for the examination of and response to petitions for establishing or modifying an American Viticultural Area (AVA).

2. Background.

The requirements for an AVA petition, as well as for the initial processing of an AVA petition and the AVA rulemaking process, are described in 27 CFR part 9. This SOP is intended to provide practical guidance to RRD employees and to describe additional administrative procedures for processing AVA petitions that are not codified in the TTB regulations. It is not intended to supersede the requirements of 27 CFR part 9. In the case of any conflict between any statement contained in this SOP and a TTB regulation, the terms of the regulatory text will prevail.

3. Procedures for Responding to an AVA Petition.

a. RRD Assignment Control Log.

Upon receipt of an AVA petition, the Specialist assigned to handle the petition should create an entry in the RRD Assignment Control Log. See TTB S 7640.2A for guidance on using the RRD Assignment Control Log.

b. Acknowledgement letter. (§9.13(a))

(1) The Specialist should acknowledge the receipt of the AVA petition within 30 days of TTB's receipt of the petition. The purpose of this letter is simply to acknowledge receipt, and it should not impart any substantive information about the petition itself or its status. See Attachment A for a sample acknowledgement letter.

(2) The acknowledgement letter should contain the Specialist's contact information so that the petitioner can contact TTB with any questions they may have regarding the petition. The letter should also inform the petitioner that TTB will provide additional detailed information following its initial evaluation of the petition.

(3) The Specialist should retain a copy of the signed acknowledgement letter in the project file.

c. Evaluating the petition.

(1) The Specialist should review the petition to determine if it meets the requirements listed in 27 CFR 9.12. The requirements include the following:

(i) *Name evidence.* (§9.12(a)(1))

--The petition must include sufficient evidence to demonstrate that the entire region within the proposed AVA is currently known by the proposed name. In the case of a petition to expand an existing AVA, the name evidence must demonstrate that the expansion area is currently known by the name of the AVA into which it will be placed.

--The name evidence must be independent of the petitioner. That is, there must be at least one piece of name evidence that comes from a source that is not connected to the vineyard(s) and/or winery(ies) owned or managed by the petitioner(s). For example, a general tourism brochure from the local chamber of commerce that uses the proposed name in a context unrelated to the petitioner's vineyard/winery would be considered independent of the petitioner. A page from the web site of the petitioner's vineyard/winery or a magazine article about the petitioner's vineyard/winery would not be considered independent of the petitioner.

--The name evidence cannot be solely anecdotal. Anecdotal evidence may be used to support other name evidence but is not, by itself, sufficient.

--Wherever practical, the petition should include copies of the name evidence materials. These materials may be in the form of an appendix to the petition. If the evidence is from a book or lengthy article, only the relevant page or pages with the relevant text highlighted needs to be provided.

(ii) *Boundary description.* (§9.12(a)(2))

The petition must explain in detail the basis for defining the boundary of the proposed AVA. The explanation must have reference to the name evidence and distinguishing features information provided in the petition.

(iii) *Distinguishing features.* (§9.12(a)(3))

--For each direction surrounding the proposed AVA, there must be at least one feature that distinguishes that direction from the proposed AVA.

--Information relating to distinguishing features affecting viticulture includes climate, geology, soils, physical features, and elevation. The petition does not have to include all of the possible distinguishing features described in the regulations.

--Each direction does not have to be distinguished from the proposed AVA in the same manner. For example, topography may distinguish the proposed AVA from the regions to the north and east, while temperature distinguishes the proposed AVA from the regions to the south and west.

--In the case of a petition to expand an existing AVA, the evidence must demonstrate that the proposed expansion area shares distinguishing features with the existing AVA (as described in the final rule that established the AVA) and is also distinguishable from the surrounding regions.

--The evidence should not be solely anecdotal. The petitioner should provide the source of the evidence.

--For climate data, the data should be gathered for the longest period of time possible, preferably for a period of at least 3 years. The petition should include the time period from which the climate data was gathered.

--For each distinguishing feature, the petition must describe the specific effect(s) that feature has on viticulture.

(iv) *Maps and boundary directions.* (§9.12(a)(4))

--The petition should include the size of the proposed AVA or, in the case of a petition to modify an existing AVA, the size of the area to be added to or removed from the existing AVA.

--The petition must explain in detail the basis for drawing the boundary as it is proposed. For example, portions of the boundary may be drawn to approximate the extent of one or more distinguishing features, the extent of

use of the proposed AVA name, or the extent of current or planned commercial viticulture.

--The petition must include all of the USGS maps necessary to draw the boundary of the proposed AVA or, in the case of a petition to modify an existing AVA, the maps necessary to draw the modified portion of the AVA.

--The petition must include written step-by-step directions for the proposed boundary or the portion of the existing boundary that is to be modified.

--If the written boundary description is not written in the typical style TTB uses, this should not be considered grounds for rejecting the petition. Style issues can be worked out with the petitioner at a later date.

(v) Evidence of viticulture. (§9.12(a)(1))

--The petition should include the number of commercial wine grape vineyards within the proposed AVA and the total planted commercial wine grape vineyard acreage. Vineyards for personal use and for table grapes or raisins may exist within the proposed AVA, but for AVA purposes, TTB is only interested in commercial wine grape vineyards.

--Although there is no minimum number of vineyards or vineyard acreage required for establishing an AVA, the vineyards should be distributed throughout the proposed AVA and not located only in one area. If the petition does not include a map showing the locations of established and planned commercial wine grape vineyards, the Specialist should request one from the petitioner before determining if the proposed AVA can be considered a "grape-growing region."

(vi) AVAs within AVAs. (§9.12(b))

-- If the petition is proposing a new AVA that would be located entirely within one or more existing AVAs, the petition should include a section that briefly describes the broad similarities and specific differences between the proposed AVA and each of the existing AVAs that encompass it.

--In the case of a proposed AVA that would encompass one or more existing AVAs, the petition should include a section that briefly describes the broad similarities and specific differences between the proposed AVA and each of the existing AVAs located entirely within it.

(vii) Partially overlapping AVAs. (§9.12(b))

--Although TTB does not specifically prohibit establishing new AVAs that partially overlap one or more existing AVAs, TTB strongly discourages this practice because it may cause confusion for consumers and industry members and is difficult for TTB to administer in terms of labeling.

--If a petition proposes a new, partially overlapping AVA, the petition must include sufficient evidence to justify the partial overlap. Otherwise, the petition should be rewritten either to exclude the partially overlapping area from the proposed AVA or to remove the overlapping area entirely from the existing AVA and place it in the proposed AVA.

(2) If the Specialist determines that the petition is deficient in one or more of the requirements listed above, he or she should reject the petition. However, if the Specialist determines that the necessary information would be easy for the petitioner to obtain in a short period of time, the Specialist may request that the petitioner provide the material before making a final determination.

d. TTB Determination. (§9.13)

(1) *Rejected petitions.*

(i) If TTB rejects a petition, the Specialist will send the petitioner a rejection letter outlining the deficiencies of the petition that must be corrected if the petitioner wishes to submit a revised petition. The letter should include the Specialist's contact information in case the petitioner has questions. A copy of the signed rejection letter should be kept as part of the project file. See Attachment B for a sample rejection letter.

(ii) If time and workload permits, the Specialist may call the petitioner prior to sending the rejection letter to discuss the petition's deficiencies. Calling the petitioner will allow the petitioner to ask questions and ensure that he or she understands the reason for the rejection and what information needs to be corrected if the petition is resubmitted.

(iii) The Specialist will return to the petitioner all submitted petition materials, along with the rejection letter.

(iv) The Specialist will close out the entry for the petition in the RRD Assignment Control Log.

(v) The Specialist will then close the project file. The closed project file should contain a copy of the signed receipt letter, a copy of the signed rejection letter, and a printout of the RRD Assignment Control Log entry for the petition. The file should be labeled with the name of the rejected AVA, the

assignment number, and the date the file was closed. The closed project file should be given to the Administrative Assistant for filing.

(2) *Accepted petitions.*

(i) If TTB accepts a petition, the Specialist will send the petitioner an acceptance letter stating that the petition has been accepted as perfected and that TTB intends to proceed with the rulemaking process. A copy of the signed acceptance letter should be included in the project file. See Attachment C for a sample acceptance letter.

(ii) The Specialist will update the RRD Assignment Control Log with the date the acceptance letter was sent.

(iii) In the case of a petition for a new AVA, the Specialist will send an AVA name check request to the ALFD Wine Team. The name check will enable the Specialist to determine if the proposed AVA name may conflict with the brand name of a current label holder. If the results of the ALFD name check indicate that such a conflict may exist, the Specialist may work with the petitioner to find an alternative name for the proposed AVA. Alternatively, the Specialist may suggest adding a geographic modifier to the name, such as the name of a county, State, or existing AVA that the proposed AVA is located within.

(iv) The Specialist will send a posting request to the TTB Web Team to add the proposed AVA to the List of Pending AVA Petitions on the TTB website.

(v) The Specialist will then proceed with the standard rulemaking process as described in 27 CFR 9.14. Note that AVA proposed rule documents do not need Treasury approval before they can publish in the Federal Register. The Specialist should update the RRD Assignment Control Log as needed.

(vi) Upon completion of the rulemaking process, the Specialist should close the entry in the RRD Assignment Control Log and send the completed project folder to the TTB Librarian. The completed project folder should contain separate files for the following:

--The petition;

--Any separate exhibits, along with a printed list of the title of each exhibit;

--The USGS maps, along with a printed list of the name of each map;

--The ALFD name check request and the ALFD response;

---All substantive correspondence with the petitioner after the acceptance of the petition, as well as a copy of the signed receipt and acceptance letters;

--The NPRM blue folder;

---The final rule blue folder; and

---A copy of all comments received during the comment period. If no comments were received, a note to that effect should be included in the folder.

(vii) For new AVAs, once the final rule is published, the Specialist will send a posting request to the TTB Web Team to update the List of Established AVAs on the TTB web page. After the effective date of the final rule, the Specialist will send another posting request to add the link to the CFR section for the new AVA.

/ S / Amy R. Greenberg
Director
Regulations and Rulings Division

Attachment A: Sample Petition Acknowledgement Letter

Note that the letter should be printed on TTB letterhead.

[DATE]

[Assignment Number]

Mr. John D. Petitioner
1234 Mira Loma Drive
Santa Maria, CA 93455

Dear Mr. Petitioner,

I am writing to confirm that TTB received your petition to establish the [proposed AVA name] American viticultural area (AVA). After we complete our initial review of the petition, we will advise you in writing of our determination regarding whether the petition is perfected. A petition is considered to be perfected when it meets TTB's regulatory requirements for AVA petitions as set forth in 27 CFR part 9 and contains sufficient supporting information for TTB to decide whether or not to proceed with rulemaking for the proposed AVA. Please note that receipt of a perfected AVA petition does not necessarily mean that TTB will proceed with rulemaking for the proposed AVA.

- If we determine that the petition for the proposed AVA is perfected, we will keep all petition documentation and advise you in writing. We will also advise you in writing of TTB's determination regarding whether we intend to proceed with rulemaking for the proposed AVA. The rulemaking process for AVA petitions is described in 27 CFR 9.14.
- If we determine that the petition is not perfected, we will return the petition to you and provide a written explanation of the petition's deficiencies.

Please contact AVA Specialist Vee Vinifera by phone at 202-555-2175 or by email at Vee.Vinifera@ttb.gov with any questions or concerns.

Sincerely,

Jane H. Honcho

Jane H. Honcho
Director, Regulations and Rulings Division

Attachment B: Sample AVA Petition Rejection Letter

Note that the letter should be printed on TTB letterhead.

[DATE]

[Assignment Number]

Mr. John D. Petitioner
1234 Mira Loma Drive
Santa Maria, CA 93455

Dear Mr. Petitioner:

We have carefully reviewed your recent petition to establish **Mt. Pisgah–Mistletoe Ridge** as an American viticultural area (AVA). Unfortunately, your petition fails to meet all of the criteria that are established in our regulations at 27 CFR part 9 (Part 9). Accordingly, we cannot accept the petition and are returning it with our comments.

Below, we outline several of the deficiencies of the petition and its supporting evidence.

Name Evidence

A petitioned-for AVA name must be supported by substantive evidence of the modern usage and association of the proposed name in connection with the area located within the proposed AVA. See 27 CFR 9.12(a)(1).

TTB has determined that the petition did not provide sufficient evidence to support the proposed “Mt. Pisgah–Mistletoe Ridge” name. Although there is sufficient evidence of a geographical feature within the proposed AVA that is called “Mt. Pisgah,” providing evidence of the nearby businesses the petition claims also use the name would strengthen the name evidence. Additionally, the petition lacks evidence to support the “Mistletoe Ridge” portion of the petition. For example, both the road and the historical school referred to in the petition are known as “Mistletoe,” not “Mistletoe Ridge.”

If you choose to revise and resubmit your petition using the “Mt. Pisgah–Mistletoe Ridge” name, you should include additional evidence to support the use of “Mt. Pisgah.” Because of the number of mountains named “Mt. Pisgah” in the United States, including three within your State, your proposed AVA’s name will need to include some type of geographic modifier. Therefore, you will either need to provide evidence that the term “Mistletoe Ridge” is currently used to describe the proposed AVA, or you must choose an alternative geographic modifier and provide evidence to support your choice.

Distinguishing Features

Part 9 requires that an AVA petition provide “a description of the common or similar features of the proposed AVA affecting viticulture that make it distinctive.” See 27 CFR 9.12(a)(3). The petition must also explain with specificity how these features affect viticulture within the proposed AVA and how they are distinguished viticulturally from features associated with adjacent areas outside the proposed AVA boundary.

Discussion of the distinguishing features of a proposed AVA must include actual data from points within the proposed AVA as well as from areas to the north, south, east, and west of the proposed AVA in order to contrast the proposed AVA’s features with the surrounding regions. Although §9.12(a)(3) lists several features that may be discussed, a petition should include only those features that, in fact, distinguish the proposed AVA from the surrounding areas.

Climate. The petition included information on the growing degree days, precipitation, and wind of the proposed AVA. However, comparison growing degree day and precipitation data was only provided for Salem, which is east of the proposed AVA. The petition did state that the nearby established Eola–Amity Hills, Dundee Hills, and Chehalem Mountains AVAs have higher elevations and, therefore, are cooler than the proposed AVA, but no data was provided to support this claim. Therefore, TTB is unable to determine if growing degree days and precipitation are features that distinguish the proposed AVA from the regions to the north, south, and west. If you wish to revise and resubmit your petition using growing degree days and precipitation as distinguishing features, you should provide data from the regions to the north, south, and west. If climate data from those regions is unavailable or does not provide a significant contrast with the proposed AVA, then you will need to clearly state this in your petition and ensure that there is at least one other feature that can distinguish these areas from your proposed AVA.

Finally, the petition states that the differences in growing degree days and precipitation “produce grapes and wines that are significantly different from those produced in the proposed AVA” and also “contribute to the unique grape and wine production in the proposed AVA.” However, §9.12(a)(3) of the TTB regulations requires petitioners to describe “with specificity in what way these features affect viticulture.” If you wish to revise and resubmit your petition, you will need to clearly describe the specific effects each distinguishing feature has on viticulture within the proposed AVA.

Geology and soils. The petition states that the combination of both exposed Siletz River volcanics and Siletz River volcanics covered by tuffaceous siltstone and sandstone is found only within the proposed AVA. These geological features contain aluminum and calcite which “enable the grapes to access a unique complex of minerals.” However, the specific effect(s) of these minerals on viticulture was not clearly described.

The unique combination of geological features also contributes to the soils of the proposed AVA, which are described as marine silty clay loams derived from sedimentary sources. The surrounding regions are said to have more alluvial soils. According to the petition, alluvial soils “are quite different from sedimentary soils” for viticulture, although this is not explained further.

If you wish to revise and resubmit your petition and include soils and geology as a distinguishing feature, you will need to clearly describe the specific effect these features have on viticulture, as required in §9.12(a)(3) of the TTB regulations. Additionally, the image in Exhibit 6c is washed-out and difficult to read. A clearer copy should be provided in any revised petition.

Conclusion

The Mt. Pisgah–Mistletoe Ridge petition did not provide sufficient evidence to demonstrate that the region within the proposed AVA is currently known as the “Mt. Pisgah–Mistletoe Ridge.” Additionally, the climate section only provided comparison data from the region to the east and did not provide an explanation for why data was not included for the surrounding regions. Finally, the petition did not adequately describe the specific effects the distinguishing features have on viticulture. Therefore, we are unable to determine that the proposed AVA is a distinct grape-growing region and are returning the petition to you.

If any questions arise or clarification is needed, please do not hesitate to contact AVA Specialist Vee Vinifera at 202-555-2175 or by email at Vee.Vinifera@ttb.gov.

Sincerely,

Jane H. Honcho

Jane H. Honcho
Director, Regulations and Rulings Division

Enclosure

Attachment C: Sample Petition Acceptance Letter

Note that the letter should be printed on TTB letterhead.

[DATE]

[Assignment Number]

Mr. John D. Petitioner
1234 Mira Loma Drive
Santa Maria, CA 93455

Dear Mr. Petitioner,

I am writing to inform you that TTB has completed its initial review of your petition to establish the [proposed AVA name] American viticultural area (AVA).

We have determined that the petition is perfected and meets TTB's regulatory requirements for AVA petitions as set forth in 27 CFR part 9. We have further determined that, at this stage, the petition contains sufficient supporting information for TTB to proceed with rulemaking for the proposed AVA. The rulemaking process for AVA petitions is described in 27 CFR 9.14. Please note that the rulemaking process may be discontinued at any time based on our further review of the petition and the supporting evidence; we will inform you in writing if such a decision is made at any point and the basis for that decision.

Please contact AVA Specialist Vee Vinifera by phone at 202-555-2175 or by email at Vee.Vinifera@ttb.gov with any questions or concerns.

Sincerely,

Jane H. Honcho

Jane H. Honcho
Director, Regulations and Rulings Division

Attachment D: Sample ALFD Name Check Request

Proposed AVA Name Search

Cocalico Creek

Located in Wessex and Chester Counties, Pennsylvania

Internet, Wikipedia, and Geographical Names Information System (GNIS)

Vee Vinifera
August 18, 2016

Cocalico Creek:

GNIS: 2 hits, both for locations within the proposed AVA [*GNIS is the Geographic Names Information System, operated by the USGS, and can be accessed at <https://geonames.usgs.gov/apex/f?p=138:1:0>.*]

Google: Approximately 4,920,000 hits. All of the results on the first two pages were related to the region of the proposed AVA [*Print out the first two pages of your Google search and include them with your request.*]

Wikipedia: 1 hit, for a location within the proposed AVA [*Print out any applicable hits and include them with your request.*]

Note: The results of the above searches are attached to this memorandum.